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June 9, 1993

Re: Change in Ownership - Revocable Grant Deed  
Reserving a Life Estate

Dear Mr.

This is in response to your letters of December 17, 1992, to Assessment Standards Division, and May 13, 1993, with attachments, addressed to me, in which you request our opinion as to how to complete a preliminary change of ownership report for a transfer of property by a revocable grant deed that reserves a life estate in the grantor. As discussed in one of our phone conversations, the delay in our response has been due to extensive involvement in property tax litigation.

You suggest that where an estate is small or modest and the real property has a nominal value, costs for probate or a revocable trust must be considered. As a low cost alternative to probate or a trust for a small estate, you

suggest the use of a grant deed to a person or charity with the reservation of a life estate and a reservation of the right to revoke the deed.

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code unless otherwise indicated) states that:

A "Change in Ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 62(e) provides that change in ownership shall not include:

Any transfer by an instrument whose terms reserve to the transferor... an estate for life; however, the termination of such an... estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

Property Tax Rule 462(d) [18 Calif. Code of Regulations Section 462] relates specifically to life estates and provides, in pertinent part, that:

The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership.

Use of revocable grant deeds has been recognized for sometime now in California. In Tenant v. John Tenant Memorial Home (1914) 167 Cal. 570, the grantor executed to the defendant Home a deed of certain real property, subject to a reservation of a life estate in the property, and subject also to a right of revocation. The grantor died without exercising the power to revoke, and both her heirs and administrator claimed the property, primarily on the ground that the deed was a will and was void as an attempted testamentary disposition without the formalities required for its execution. The court held that a deed, to be valid, must make a present transfer, although the enjoyment of the property by the grantee can be made to commence in the future; and that the deed was a valid deed. The reservation of the power to revoke did not affect the present conveyance of a vested future interest. Rather, it merely provided the means whereby such vested future estate could be defeated before it ripened into an estate in possession.

Clearly then, the revocable grant deed, reserving a life estate in the transferor or the transferor's spouse, will be excluded from being treated as a change in ownership at its

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creation. (Section 62(e), Rule 462(d)). Upon termination of the life estate, the vesting in a remainderman other than the transferor or the transferor's spouse of a right to possession or enjoyment of the property will result in a change in ownership of the property.

Turning to the issue of how to explain the aforementioned transfer on the preliminary change of ownership report, we would suggest the following:

"This transfer of real property by the grantor reserves a life estate for the benefit of the grantor. Rev. & Tax. Code Sec. 62(e) and Property Tax Rule 462(d). While the transfer is by revocable grant deed, such deeds are valid in California, and the transfer of real property by such a deed is within the Section 62(e) exclusion."

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult with the appropriate county assessor to confirm that the transaction will be assessed in a manner consistent with the conclusions stated above.

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours



Carl J. Bessent  
Staff Counsel

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cc: Mr. John W. Hagerty, MIC:63  
Mr. Verne Walton, MIC:64  
Mr. Arnold Fong, MIC:64